

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Franklin Alan Miller,

Civil No. 09-2405 (DWF/LIB)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

State of Minnesota,

Respondent.

Franklin Alan Miller, *Pro Se*, Petitioner.

Leslie E. Beiers, Assistant St. Louis County Attorney, St. Louis County Attorney's Office, counsel for Respondent.

This matter is before the Court upon Petitioner Franklin Alan Miller's objections (Doc. Nos. 39, 41) to Magistrate Judge Leo I. Brisbois's August 16, 2011 Report and Recommendation (Doc. No. 35) insofar as it recommends that Petitioner's petition for a writ of habeas corpus, as amended, be denied and this action be dismissed with prejudice. Respondent did not formally respond to Petitioner's objections but relies on its previous filings as well as Magistrate Judge Brisbois's Report and Recommendation. (Doc. No. 42.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and

precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

The Court has carefully reviewed the record and concludes that Petitioner's objections offer no basis for departure from the Report and Recommendation. Petitioner disputes the Magistrate Judge's conclusions with respect to purported *Brady* and *Giglio* violations as well as Petitioner's claims of ineffective assistance of counsel. As explained by Magistrate Judge Brisbois, Petitioner has procedurally defaulted on the federal claims he failed to raise in state court. With respect to the claims adjudicated on the merits in state court, Petitioner has failed to demonstrate that such adjudication either "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" or that it "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d). Consequently, Petitioner is not entitled to habeas relief pursuant to 28 U.S.C. § 2254(d), and his objections are properly overruled.

Because Petitioner has failed to make "a substantial showing of the denial of a constitutional right," the Court further declines to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2).

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Franklin Alan Miller's objections (Doc. No. [39, 41]) to Magistrate Judge Leo I. Brisbois's August 16, 2011 Report and Recommendation are **OVERRULED**.

2. Magistrate Judge Leo I. Brisbois's August 16, 2011 Report and Recommendation (Doc. No. [35]) is **ADOPTED**.

3. Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. No. [1]) is **DENIED**.

4. Petitioner's Amended Petition for Relief From a Conviction or Sentence by a Person in State Custody, filed as an Attachment to Petitioner's Motion for Leave to File Amended Application for a Writ of Habeas Corpus (Doc. No. [18], Attachment 1) is **DENIED**.

5. Respondent's Motion to Dismiss (Doc. No. [32]) is **GRANTED**.

6. This matter is **DISMISSED WITH PREJUDICE**.

7. A Certificate of Appealability will **NOT** be issued to Petitioner.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 16, 2011

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge